CSA
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Testimony of **William Flynn**
President, Connecticut Subcontractors Association
Committee on Transportation
Re: **Raised Bill No. 413—"An Act Concerning The Denial of Prequalification Certificates by the Commissioner of Administrative Services"**

March 10, 2010

My name is Bill Flynn. I am the President and a founding Board Member of the Connecticut Subcontractors Association, a trade association that represents all segments of the Connecticut construction subcontracting industry. I also am Vice-President of Electrical Contractors, Inc. of Hartford, one of the largest electrical contractors in the State. Our construction firm has performed dozens of projects for the State DPW, many towns and cities, and a variety of large private owners in our state.

The Connecticut Subcontractors Association (CSA) was instrumental in supporting and enacting the current Prequalification legislation and system. Our Board members, including myself, have worked continuously in cooperation with DAS and DPW officials to improve the program and ensure that it is implemented fairly and effectively. We laud the efforts to date of the DAS, and in particular Carlos Velez and his dedicated staff, in administering this program efficiently, realistically, and most important—fairly—to the mutual benefit of both the public and the construction industry.

It bears repeating that the hallmark of the Prequalification Program to date, as administered by DAS, has been its fairness. To our knowledge, no contractor or substantial subcontractor has been subjected to disparate treatment based on politics, personal grudges, labor affiliation, or any other criteria that is not required to properly administer this program.

Although the CSA strongly supports the rationale behind Raised Bill No. 241—maintaining the quality and integrity of the public contracting process—we must **oppose** the bill in its present form. By injecting a numerical quotient of "unsatisfactory written evaluations" as a stand-alone basis for denial of prequalification, the door would be opened wide for biased, subjective evaluations to unfairly cripple or even destroy competent and qualified contractors. Currently, DAS averages out all evaluation scores received to determine prequalification, which tends to mitigate the effect of an improperly issued "unsatisfactory" evaluation.

From the outset of enacting the mandatory Prequalification program, the CSA has sought some form of simple, efficient administrative process by which a contractor could challenge an improperly issued "unsatisfactory" evaluation. Presently, a contractor can only submit a written objection to such an evaluation, which is then placed in its file at DAS. Unfortunately, this mechanism is of very little value—the real harm from an improperly issued "unsatisfactory evaluation" occurs immediately upon its issuance. These evaluations are

routinely referenced by towns and other public bidding authorities to determine a contractor's "responsibility" for subsequent projects. If a public owner is *looking for a reason* to disqualify a perfectly competent low bidder for a municipal project, then just one improperly issued "unsatisfactory evaluation" is sufficient to provide "good faith" grounds to justify rejection of that contractor's bid. The fact that the "unsatisfactory evaluation" was unfair or inaccurate, and the fact that the contractor submitted a documented rebuttal to DAS in response, simply does not matter. In turn, the next town could use both the improper evaluation and the prior town's rejection of that bidder to justify its own improper rejection of a qualified bidder.

This is not some "hypothetical" set of circumstances. It is not unusual for a contractor and a town, or its supervising architect or project manager, to experience disputes and claims on a project. In those circumstances, it becomes the rule, not the exception, for the public agency to blame the contractor for problems on the job that actually were the fault of faulty design or other issues beyond the contractor's control. This usually results in the issuance of an inaccurate but very damaging "unsatisfactory evaluation"-- and now the domino effect begins for the contractor.

CSA believes that this problem would be greatly alleviated, and our Prequalification system much improved, if a simple administrative procedure was enacted whereby contractors could challenge the issuance of an "unsatisfactory" evaluation. A neutral official at DAS could review the contractor's documented challenge solely to determine whether substantial questions have been raised as to the accuracy of the evaluation. If that is the case, then the evaluation could not be considered for DAS Prequalification purposes. If the challenge was unsuccessful, the contractor's objection would remain on file, and no further action would be taken. Either way, there is no need for any further appeal to any other administrator or to the courts. The mere existence of a neutral, third-party review would significantly enhance the integrity of the entire prequalification process.

This procedure would not be cumbersome or expensive. First, there would not be that many of these "appeals." They would be extremely truncated in scope, and they would not lead to any further appeal process. Not only would this greatly reduce the chances of a contractor improperly losing its Prequalification status due to unfair evaluations, it also would decrease the likelihood of a subsequent court battle between a contractor and DAS over a prequalification denial or revocation. Overall, it is likely to save the state money in administering the program, while at the same time greatly enhancing the program's quality.

In conclusion—please do not pass this bill in its present form.

Thanks to the Transportation Committee for considering this important legislation.